

DEC 27 2005

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) WALK.01USU1	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO (571-273-8300) under 37 CFR §1.8:		Application Number 10/602,417	Filed 6/23/2003
on <u>December 27, 2005</u>		First Named Inventor Dean M. Walker	
Signature <u>Kathy M. Manke</u>		Art Unit 3671	Examiner Meredith C. Petravick
Typed or printed name <u>Kathy M. Manke</u>			

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

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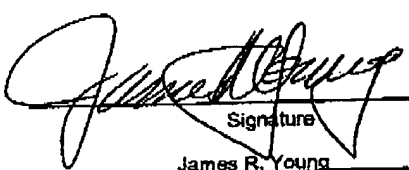
☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 27,847

☐ attorney or agent acting under 37 CFR 1.34.
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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.


 Signature
 James R. Young
 Typed or printed name
 970-492-1100
 Telephone number
 December 27, 2005
 Date

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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DEC 27 2005**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor: Dean M. Walker

Examiner: Meredith C. Petravick

Application No.: 10/602,417

Group Art Unit: 3671

Filing Date: June 23, 2003

Docket No.: WALK.01USU1

Title: WALK BEHIND MOWER

Confirmation No. 9600

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant hereby submits a Pre-Appeal Brief Request for Review in accordance with the Pre-Appeal Brief Conference Pilot Program. Applicant makes the following statement:

1. Claim 2 recites in part

deck attachment arms that extend in a forward direction from said forward end of said tractor unit and that pivot at said forward end of said tractor unit in a direction that is transverse to both said plane defined by said drive wheels and said third wheel and said lengthwise direction; (Emphasis Added).

The Examiner has argued that as the mower deck pivots around the longitudinal axis, the rear end of the mower deck is elevated (See Advisory Action). Further, the Examiner argues that the deck attachment arms constitute elements 111, 47, 55 and 57 on one side of the mower and 112, 56, 48 and 55 on the other side of the mower of the Smith reference.

First, this combination of elements shown in Smith does not constitute "deck attachment arms" as set forth in claim 2. Elements 55 and 56 in Smith constitute chains that are clearly not "arms".

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Second, the mowing deck, as defined in claim 2, does not pivot in the longitudinal direction. The “mowing deck” recited in claim 2 includes “at least two front wheels mounted on said forward end of said mowing deck.” In other words, the mowing deck defined in claim 2 includes the front wheels.

To help the Examiner to understand a significant difference between Smith and one embodiment of the present invention as recited in claim 2, the Examiner’s attention is invited to Applicant’s Figure 4 wherein the phantom lines 412 illustrate the position that the handles and controls would take as the front wheels of the mower deck 402 go over a hill 408, if the apparatus did not have the articulated (pivotal) connection of claim 2. In this context, it is easy to see that if such handles and controls were mounted on the rear traction unit 10 in Figure 1 of Smith, they would follow the same motion as the phantom lines 412 in Applicant’s Figure 4, which is the antithesis of the invention recited in Applicant’s claim 2. The ability of Smith’s mower deck to pivot around his longitudinal axis, which was pointed out by the Examiner, would not allow such a handle and controls on Smith’s rear traction unit 10 to stay in the position shown by 406 in Applicant’s Figure 4, because Applicant’s pivot can be about a transverse axis with respect to Applicant’s tractor 404, as illustrated in Figure 4. In contrast, Smith’s tubular frame member 12 attaches his steering unit 11 to his traction unit 10 in a manner that allows oscillation about the longitudinal axis of his tractor, not about a transverse axis. See Smith, column 2, lines 55-58.

Also, claim 2 states that the mowing deck has “receivers” that “engage said deck attachment arms so that said mowing deck pivots with respect to said tractor unit in longitudinal direction.” The wheels 18 of Smith do not pivot in a longitudinal direction in relation to his traction unit 10, but only in a transverse direction, i.e., about his longitudinal axis, as explained in Smith, column 2, lines 55-58. Also, the mowing deck of Smith does not have “receivers.”

Further, claim 2 states:

...so that said mowing deck pivots with respect to said tractor unit ... which allows said mowing deck to follow elevational changes as said self-propelled walk behind mower traverses terrain having slopes that change ... [in the longitudinal direction] ... such that said handles maintain a substantially constant elevational position with respect to said user and said plane so that said user can operate controls of said self-propelled walk behind mower without substantial elevational movement of

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said handles and said plane while self-propelled walk behind mower traverses said slopes that change ... [in the longitudinal direction].

As recited in claim 2 above, the pivoting in the longitudinal direction allows the mowing deck (including the two front wheels) to follow elevational changes in the longitudinal direction such that the handles maintain a substantially constant elevational position with respect to the user so that the user can operate the controls without substantial elevational movement of the handles. These limitations have not been disclosed or taught, in any fashion, by Smith or by any of the other references. As indicated above, if handles were attached to the tractor unit 10 of Smith, elevational changes in the longitudinal direction would cause such handles to have elevational changes as the Smith tractor moves over terrain having slopes that change in the longitudinal direction, irrespective of any type of elevational movement of the rear portion of the mowing deck of Smith. For these reasons, neither Smith nor any of the cited references show these limitations set forth in claim 2.

Hence, even if the references could be combined as suggested by the Examiner, these references still do not teach Applicant's claimed invention:

2. With respect to the arguments that Smith provides the motivation for a combination of the references, the Examiner cites column 1, lines 16-28, of Smith. This section of Smith merely states the rear portion of the mower deck does not drop a predetermined distance below the center axis of wheel 18 and the center axis of wheel 16, as determined by the length of the chain 56. (see Figure 5 of Smith). The mowing deck in Smith does move upwardly, but only when Smith's wheels 18 rotate around a longitudinal axis. Since the wheels 18 are rigidly connected to the mowing deck in Smith, his mowing deck also moves upwardly with respect to his tractor unit 10 as longitudinal elevational changes are encountered, as shown by the slack in chain 55 in Figure 5 of Smith. This action simply prevents scalping of the grass, but does not allow the mowing deck, including the two front wheels of Smith, to accommodate elevational changes in the longitudinal direction in the manner described and claimed in this patent application.

Wenzel and Sewell are unitary structures and simply follow the ground terrain. Smith simply teaches rotational movement of the mowing deck around a longitudinal

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axis. There are no pivots provided in Smith for pivoting the mowing deck, including the wheel structure 18, in a longitudinal direction (around a transverse axis). Certainly, any time there is rotation around a longitudinal axis, there will be elevational changes in the mowing deck, as illustrated in Figure 5 of Smith. However, such elevational changes do not constitute a pivoting in the transverse direction, as set forth in claim 2.

3. The Examiner argued that the term "substantial" is indefinite since it is unclear as to the scope of the term as used in claim 2. As indicated in the response to the last Office Action, the test used for the term "substantial" is whether one of ordinary skill in the art would know what is meant by the term.

The present invention relates to a mechanical invention which is a predictable art. With respect to the claim language of maintaining "a substantially constant elevational position" and "without substantial elevational movement," Figures 1, 2 and 4, as well as page 6, lines 3-11 of the specification clearly describe these terms as they would be understood by one of ordinary skill in the art. Specifically with respect to Figure 4, the specification states that "if the articulated arrangement were not present, the position of the tractor 400 may be illustrated by the phantom position 410. In the phantom position 410, the operator controls 412 would be significantly higher and more difficult to reach for the operator 404 than the present embodiment 400" (Emphasis Added). In other words, Figure 4 illustrates a phantom position in which the handle does not maintain a substantially constant elevational position and is significantly higher. Further, the specification states that "when the mower traverses a valley, the articulated arrangement of the tractor 400 and the mowing deck 402 keeps the operator controls 406 in a much more convenient position for the operator 404" (Emphasis Added). Figures 1, 2 and 4 all show the convenient position for the operator 404 to operate the device so that the handle maintains a substantially constant elevational position without substantial elevational movement. These limitations have been described and are certainly clear to those of ordinary skill in the art.

With regard to the limitation "allows the tractor unit to make substantially zero radius turns," the specification on page 6 lines 24+ states:

For example, during forward motion, the operator may squeeze the left hand control 516 to slow the left hand drive wheel 504 and cause the

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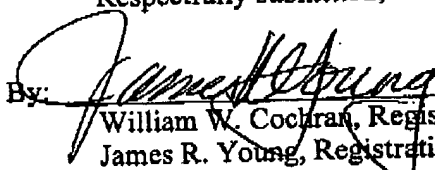
tractor 500 to turn to the left. The sharpness of the turn is dictated by the amount that the operator grips the respective hand control. The hydro-axle system may have the capability of reversing the drive wheels. In such a case, squeezing the hand control completely will cause the drive wheel to reverse direction, allowing the tractor 500 to execute a zero radius turn. (Emphasis Added)

In other words, the specification teaches how to execute a zero radius turn. One of ordinary skill in the art would certainly understand what constitutes a substantially zero radius turn from these teachings of the specification. Certainly, "general guidelines" are contained in the specification for making a substantially zero radius turn, as pointed out above, in accordance with *In Re Mattison, supra*.

For these reasons, the claims are considered to be definite and distinguish over the prior art. Allowance of this application is earnestly solicited.

Dated this 27th of December, 2005.

Respectfully submitted,

By: 

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